

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BIO-LAYER
INTERFEROMETERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1344

**NOTICE OF COMMISSION DECISION TO EXTEND THE DEADLINE
FOR DETERMINING WHETHER TO REVIEW A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend until June 26, 2024, the deadline for determining whether to review a final initial determination (“FID”) of the presiding Administrative Law Judge (“ALJ”) finding no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 29, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Sartorius Bioanalytical Instruments, Inc. (“Sartorius”) of Bohemia, New York. *See* 87 FR 73329-30 (Nov. 29, 2022). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bio-layer interferometers and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 7,445,887 (“the ’887 patent”); 7,394,547 (“the ’547 patent”); 7,728,982 (“the ’982 patent”); and 8,305,585 (“the ’585 patent”). *See id.* The notice of investigation names Gator Bio, Inc. (“Gator Bio”) of Palo Alto, California as the sole respondent in the investigation. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission previously terminated the investigation as to the '547, '982, and '585 patents and claims 1-5, 7, 9-14, and 16-18 of the '887 patent based on the withdrawal of the complaint as to those patents and claims. *See* Order No. 14 (May 15, 2023), *unreviewed by* Comm'n Notice (June 9, 2023); Order No. 26 (June 29, 2023), *unreviewed by* Comm'n Notice (July 20, 2023); Order No. 37 (Oct. 26, 2023), *unreviewed by* Comm'n Notice (Nov. 27, 2023).

On March 8, 2024, the ALJ issued the FID finding no violation of section 337. Specifically, the FID finds that the accused products do not infringe claim 8 of the '887 patent, and that the domestic industry products do not practice that claim, thus finding that the technical prong of the domestic industry requirement is not satisfied. The FID also finds that claim 8 of the '887 patent is not invalid. The FID further finds, should the Commission find that the technical prong is satisfied, that the economic prong of the domestic industry requirement is satisfied with respect to the '887 patent.

On March 22, 2024, Sartorius petitioned for Commission review of the FID's finding of no violation of section 337. On the same day, Gator Bio filed a contingent petition for review requesting review of certain FID's findings. On April 3, 2024, the parties, including OUII, filed responses to the petitions for review.

The Commission has determined to extend the deadline for determining whether to review the FID until June 26, 2024.

The Commission's vote for this determination took place on May 9, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 9, 2024